

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9549 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE TEXTILE CORPN. LTD

Versus

SHAMBUBHAI BECHARBHAI

Appearance:

1. Special Civil Application No. 9549 of 1995
MS PJ DAVAWALA for Petitioner No. 1
MR KV GADHIA for Respondent No. 1
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/04/2002

ORAL JUDGEMENT

Today, this petition was ordered to be dismissed for default in absence of the learned advocate Ms. P.J. Davawala for the petitioner. However, after the order was transcribed and signed by this Court, learned

advocate Ms. Davawala for the petitioner has appeared before this Court and request was made by her for recalling the order. Considering the request made by Ms. Davawala, the order passed by this court for dismissing this petition for default is hereby recalled and the matter is ordered to be restored on the files of this Court.

Heard learned advocate Ms. Davawala on the merits of the matter. In this petition, the petitioner has challenged the order passed by the labour court concerned in recovery application no. 785 of 1987 dated 14th September, 1995 wherein the labour court has granted an amount of Rs. 22,200/- in favour of the respondent workman. Learned advocate Ms. Davawala has submitted that the said agreement has arrived at by the union with the erstwhile management and not with the present corporation and, therefore, whatever commitments as per the said agreement are required to be fulfilled by the erstwhile management and not by the present corporation. She has submitted that the order in question passed by the labour court is contrary to the provisions of section 11 of the Nationalization Act. She has also submitted that the labour court has erred in not appreciating the fact that the petitioner corporation could not be visited with the liability for the defaults, if any, committed by the erstwhile management. According to her, the conclusion of the order is that though the respondent has retired prior to the nationalization, retrenchment compensation is required to be paid by the corporation which is unwarranted in view of the provisions of the Nationalization Act. As per the provisions of the said Act, liabilities prior to the appointed day i.e. 8th November, 1985 in this case shall be the liability of the erstwhile management and not of the State Government or the petitioner corporation and, therefore, order in question is required to be quashed and set aside.

On the other hand, learned advocate Mr. Gadhia appearing for the respondent has submitted that the order in question was passed by the labour court in absence of the corporation and therefore, there is an alternative equally efficacious remedy available to the petitioner under rule 26A of the Industrial Disputes Act (Gujarat) Rules, 1966 and, therefore, present petition cannot be entertained in view of the availability of alternative remedy to the corporation.

I have considered the submissions made by the learned advocates for the parties. The order in question has been passed by the labour court in absence of the

petitioner and, therefore, the petitioner is having remedy under rule 26A of the said Rules for setting aside the order which has been passed in its absence and then to raise the contentions before the labour court which it has raised before this Court for the first time. Under Rule 26-B of the said Rules, the labour court is also having power to stay operation of such ex parte order. Therefore, according to my opinion, it would be just and proper to direct the corporation to approach the labour court concerned by filing necessary application under rule 26A of the said Rules for setting aside such an ex parte order and also for stay of such an ex parte order under rule 26B. Question of delay will arise in approaching the labour court for setting aside the ex parte order passed by the labour court and the labour court will take into consideration pendency of this petition before this court while considering the question of delay. Therefore, it is directed to the petitioner to approach the labour court concerned for setting aside the order in question under rule 26-A of the said Rules and it is directed to the labour court to consider the question of delay while keeping in view the pendency of this petition before this Court for this much period and to entertain the application that may be preferred by the petitioner on merits.

With these observations and directions, this petition is disposed of without entering into the merits of the matter. Rule is discharged. Interim relief, if any, shall stand vacated with no order as to costs.

Dt. 26.4.2002. (H.K. Rathod,J.)

Vyas